

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 662

BY SENATOR HAMILTON

[Originating in the Committee on Economic
Development; reported on February 24, 2022]

1 A BILL to amend and reenact §7-25-3, §7-25-5, §7-25-6, §7-25-10, and §7-25-15 of the Code of
2 West Virginia, 1931, as amended, all relating to resort area districts; updating definitions
3 and petition procedures; clarifying board nominee qualifications; permitting board
4 members to receive reasonable compensation for service; detailing procedures for
5 expansion of Resort Area District; providing for local election; and authorizing districts to
6 collect service assessments from property owners for services.

Be it enacted by the Legislature of West Virginia:

ARTICLE 25. RESORT AREA DISTRICTS.

§7-25-3. Definitions.

1 For purposes of this article:

2 (a) "Assessment" means the fee, including interest, paid by an owner of real property
3 located within a resort area district to pay for the cost of a project or projects constructed upon,
4 or benefitting, or protecting such property and administrative expenses thereto, and to pay for the
5 cost of service, which ~~fee is~~ fees are in addition to all taxes and other fees levied on the property.

6 (b) "Assessment bonds" means special obligation bonds or notes issued by a resort area
7 district which are payable from the proceeds of assessments.

8 (c) "Board" means a resort area board created pursuant to this article.

9 (d) "Code" means the Code of West Virginia, 1931, as amended by the Legislature.

10 (e) "Commercial business property owner" means a person owning nonresidential, real
11 property in the district used for business or commerce.

12 ~~(e)~~ (f) "Cost" means the cost of any or all of the following:

13 (1) Providing services within a resort area district;

14 (2) Construction, reconstruction, renovation, and acquisition of all lands, structures, real
15 or personal property, rights, rights-of-way, franchises, easements, and interests acquired or to be
16 acquired by a resort area district;

17 (3) All machinery and equipment, including machinery and equipment needed to provide,

expand, or enhance services to a resort area district;

(4) Financing charges and interest prior to and during construction and, if deemed advisable by a resort area district, for a limited period after completion of construction;

(5) Interest and reserves for principal and interest, including costs of bond insurance and any other type of financial guarantee;

(6) Costs of issuance in connection with the issuance of assessment bonds or resort service fee bonds;

(7) The design of extensions, enlargements, additions, and improvements to the facilities of a resort area district;

(8) Architectural, engineering, financial, and legal services;

(9) Plans, specifications, studies, surveys, and estimates of costs and revenues;

(10) Administrative expenses necessary or incident to any project or service; and

(11) Other expenses as may be necessary or incident to the provision of services or the construction, acquisition, and financing of a project.

~~(f)~~ (g) "Governing body" means the county commission of a county.

~~(g)~~ (h) "Governmental agency" means the state government or any agency, department, division, or unit thereof; counties; municipalities; any watershed enhancement districts; soil conservation districts; sanitary districts; public service districts; drainage districts; school districts; urban renewal authorities; or regional governmental authorities established pursuant to this code.

~~(h)~~ (i) "Landowner" or "owner of real property" means the person or persons holding an interest in the record fee title to one or more parcels of real property, including residential, improved real property, and unimproved, developable real property, or of units within a multiunit property, including condominiums and townhouses, within a resort area district or a proposed resort area district: *Provided*, That the holder or holders of a deed of trust shall not be considered a landowner or owner of real property.

~~(i)~~ (j) "Parcel" shall mean:

(1) A lot or parcel of real property as set forth on a plat covering such real property, or in the event no plat exists, as set forth on the tax maps of a county; or

(2) A unit within a multiunit property as defined in §36B-1-103 of this code.

~~(j)~~ (k) "Person" means an individual, firm, partnership, corporation, limited liability company, voluntary association, or any other type of entity.

(l) "Primary resort operator" means any person owning and operating the primary outdoor recreational facility in a resort area that generates the greatest amount of revenue annually, and offering outdoor recreational services such as skiing, golfing, or boating to the general public.

~~(k)~~ (m) "Project" means the design, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipping, maintenance, repair (including replacements), and start-up operation of public buildings, culverts, streets, bridges (including approaches, causeways, viaducts, underpasses and connecting roadways), motor vehicle parking facilities (including parking lots, buildings, ramps, curb-line parking, meters, and other facilities deemed necessary, appropriate, useful, convenient, or incidental to the regulation, control, and parking of motor vehicles), public transportation, public recreation centers, public recreation parks, bicycle paths and trails, hiking paths and trails, landscaping, swimming pools, tennis courts, golf courses, skating rinks, equine facilities, motor vehicle competition and recreational facilities, flood protection or relief projects, or the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing, widening, lighting, or otherwise improving any street, avenue, road, highway, alley, or way, or the building or renewing of sidewalks and flood protection; and the term shall mean and include any project as a whole, and all integral parts thereof, including all necessary, appropriate, useful, convenient, or incidental appurtenances and equipment in connection with any one or more of the above: *Provided*, That a project shall not include a facility or service that benefits only the resort operator, or which the resort operator charges a fee or obtains revenue, or that constitutes part of any facility or service provided by the resort operator, such as a ski lift or ski slope.

~~(f)~~ (n) "Purchase price" means the measure subject to the resort service fee authorized to be imposed by this article and has the same meaning as sales price. For purposes of this article, the purchase price of a good or service shall not include the taxes levied under §11-15-1 *et seq.* or §11-15A-1 *et seq.* of this code or any other provision of law.

~~(m)~~ (o) "Ranger" means a resort area ranger.

~~(n)~~ (p) "Resort area" means an area that:

(1) Is an unincorporated area with a contiguous geographic boundary within one county that has been defined by the process set forth in this article;

(2) Has a permanent population of less than ~~two thousand~~ 2,000 people, according to the most recent federal census;

(3) Derives the major portion of its economic well-being from businesses catering to the recreational and personal needs of persons traveling to or through the area;

(4) Is a destination location containing each of the following:

(i) Residential, improved real property;

(ii) One or more resort operators;

(iii) Commercial business properties such as retail stores, restaurants, and hotels or other lodging accommodations; and

(iv) Unimproved real property which remains developable;

(5) Does not include real property primarily used for manufacturing, milling, converting, producing, processing or fabricating materials, generating electricity, or the extraction or processing of minerals.

~~(e)~~ (q) "Resort area district" or "district" means a resort area district created pursuant to this article.

~~(p)~~ (r) "Resort operator" means any person owning and operating the primary outdoor recreational facilities in a resort area and offering outdoor recreational services such as skiing, golf ~~golfing~~ or boating to the general public.

~~(q)~~ (s) "Resort service fee" means the fee imposed on the purchase price of goods and services sold within a resort area district by any of the following establishments:

(1) Hotels, motels, campgrounds, lodges, and other lodging or camping facilities;

(2) Restaurants, fast-food stores, and other food service establishments selling prepared foods;

(3) Taverns, bars, nightclubs, lounges, and other public establishments that serve beer, wine, liquor, or other alcoholic beverages by the drink;

(4) Retail establishments;

(5) Entertainment facilities, including, but not limited to, theaters, amphitheaters, halls, and stadiums; and

(6) Recreational facilities and activities, including, but not limited to, ski resorts, golf courses, water sports, rafting, canoeing, kayaking, rock climbing, and zip lines.

~~(r)~~ (t) "Resort service fee bonds" means special obligation bonds or notes issued by a resort area district which are payable from the proceeds of resort service fees.

~~(s)~~ (u) "Service" includes, but is not limited to, snow removal; operation and maintenance of public transportation; maintenance, upgrade, and beautification of public common areas; maintenance and repair of roads and sidewalks; providing for the collection and disposal of garbage and other refuse matter; recycling; operation, upgrade, and maintenance of any projects or improvements; and any other public service authorized by this article, including fire protection and public safety. For purposes of this article, a common area shall not include any facility that benefits only the resort operator, or for which the resort operator charges a fee or obtains revenue, or which constitutes part of any facility or service provided by the resort operator, such as a ski lift or ski slope, golf course, or tennis facility.

(v) "Service assessment" means the fee imposed on owners of real property for the cost of service.

~~(t)~~ (w) "Sheriff" means the sheriff of the county in which a resort area district is located.

§7-25-5. Petition for creation or expansion of resort area district; petition requirements.

(a) The owners of at least 61 percent of the real property, determined by acreage, located within the boundaries of the resort area described in the petition, by metes and bounds or otherwise in a manner sufficient to describe the area, may petition a governing body to create or expand a resort area district.

(b) The petition for the creation ~~or expansion~~ of a resort area district shall include, where applicable, the following:

(1) The proposed name and proposed boundaries of such district and a list of the names and addresses of all owners of real property within the proposed district;

(2) A description of proposed projects and services to be provided within the district;

(3) A map showing the proposed resort area to be included in the resort area district;

(4) A list of estimated project and service costs;

(5) A feasibility or consultant study concerning the formation of the proposed district and the funds to be generated by the implementation of a resort service fee and indicating that the proposed resort service fee will provide sufficient revenue for proposed services and projects;

(6) The proposed rate or rates, not to exceed five percent of the purchase price, of the resort service fee and the proposed classes of goods and services to which each rate shall apply;

(7) The proposed effective date of the resort service fee;

(8) A certification from the ~~State~~ Tax Commissioner of the amount of consumers sales and service taxes collected from businesses located in the proposed district during the most recent 12 calendar month period for which such data is available that precedes the calendar quarter during which the petition will be submitted to the governing body;

(9) A development schedule; and

(10) A statement of the benefits that can be expected from the creation of the district.

(c) Within 60 days of the submission of a petition for the creation of a resort area district, the governing body shall by order determine the completeness of the petition. If the governing

body determines that the petition is complete, it shall set a date for the public meeting required under §7-25-6 of this code and shall cause the petition to be filed with the clerk of the governing body and be made available for inspection by interested persons before the meeting. If the governing body determines that such petition is not complete, the petition shall be returned to the petitioners with a statement of additional information required for such petition to be complete.

(d) The owners of at least 61 percent of the real property, determined by acreage, located within the boundaries of an area with at least one common boundary with the resort area, as described in the petition, by metes and bounds or otherwise in a manner sufficient to describe the area, may petition the resort area board to expand a resort area district.

(e) The petition for the expansion of a resort area district shall include, where applicable, the following:

(1) A list of the names and addresses of all owners of real property within the proposed expansion of the resort area district;

(2) A map showing the proposed resort area to be included in the resort area district;

(3) A statement of the benefits that can be expected from the expansion of the district; and

(4) Verification that the owners of at least 61 percent of the real property owners in the proposed expansion area approve becoming part of the existing district.

(f) The resort area board will receive the petition and determine if the petition is complete and verified. When the petition is complete and verified, the resort area board shall adopt a resolution calling for a vote of the qualified voters of the resort area district to be taken upon the proposed expansion on a date and at a time and place to be stated in the resolution. Concurrently, the resort area board shall call for a vote of all the qualified voters of the proposed expansion area to be taken on the same date, time, and place.

§7-25-6. Notice to property owners before creation or expansion of resort area district; form of notice; affidavit of publication; election.

(a) Before the adoption of an order creating a resort area district, the governing body shall

cause notice to be given to the owners of real property located within the proposed resort area district that the order will be considered for adoption at a public meeting of the governing body at a date, time, and place named in the notice and that all persons at that meeting, or any adjournment of the meeting, shall be given an opportunity to protest or be heard concerning the adoption or rejection of the order. At or after the meeting the governing body may amend, revise, or otherwise modify the information in the petition for formation or expansion of a resort area district as it may consider appropriate after ~~taking into account~~ considering any comments received at the meeting.

(b) A resort area district may not be created by a governing body if, at the public meeting required by this section, written protest is filed by at least 25 percent of the owners of real property proposed to be included within the district. In the event of a protest, the petition for the creation of the resort area district may not be resubmitted to the governing body for a period of at least one year from the date of the original submission.

(c) At least 60 days prior to the date of the meeting, the notice required by this section shall, using reasonable efforts, be mailed to each owner of real property to be included in the proposed resort area district as provided in subsection (g) of this section, posted in multiple, conspicuous, public locations within the proposed district and published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for the publication shall be the county in which the proposed resort area district is located. The notice shall be in the form of, or substantially in the form of, the following notice:

“NOTICE TO ALL PERSONS OWNING PROPERTY LOCATED WITHIN _____
(here describe the boundaries of the proposed resort area district) IN THE COUNTY OF _____ (name of county):

A petition has been presented to the county commission of the County of _____ (name of county) requesting establishment of a resort area district and authorization of a resort service fee under ~~article twenty-five, chapter seven~~ §7-25-1 et seq. of the code of West Virginia,

1931, as amended, to _____ (describe potential projects and/or services to be provided) in the county of _____ (name of county) as the county commission may deem proper. A copy of the petition is available in the office of the clerk of the county commission of the County of _____ (name of county) for review by the public during regular office hours.

The petition to create a resort area district will be considered by the county commission at a public meeting to be held on the ____ day of _____, _____, at ____m. at _____.

Any owner of real property whose property may be affected by the creation of the above-described resort area district, and any owner of real property whose property is not located within said resort area district but wishes his or her property to be included, will be given an opportunity, under oath, to protest or be heard at said meeting or any adjournment thereof:

_____ (name of clerk)

(d) An affidavit of publication of the notice made by newspaper publisher, or a person authorized to do so on behalf of the publisher, and a copy of the notice shall be made part of the minutes of the governing body and spread on its records of the meeting described in the notice. The service of the notice upon all persons owning any interest in any real property located within the proposed resort area district shall conclusively be determined to have been given upon completion of mailing as provided in subsection (g) of this section and the newspaper publication.

(e) The petitioners shall bear the expense of publication of the notice, the meeting, and the mailing of the proposed order, as requested by subsection (f) of this section.

(f) After the public meeting and before the governing body may adopt an order creating a resort area district, the governing body shall, using reasonable efforts, mail a true copy of the proposed order creating the resort area district to the owners of real property in the proposed district as provided in subsection (g) of this section and shall post copies of the proposed order in multiple, conspicuous, public locations within the proposed district. Unless waived in writing, any petitioning owner of real property has 30 days from mailing of the proposed order in which to withdraw his or her signature from the petition in writing prior to the vote of the governing body on

the order. If any signatures on the petition are withdrawn, the governing body may adopt the proposed order only upon certification by the petitioners that the petition otherwise continues to meet the requirements of this article. If all petitioning owners of real property waive the right to withdraw their signatures from the petition, then the governing body may immediately adopt the order.

(g) For purposes of the mailing of each notice to owners of real property required by this section, reasonable efforts shall be made to mail the notice to all owners of real property proposed to be included within the resort area district using the real property tax records and land books of the county in which the proposed district is located and any lists maintained by a resort operator or homeowners association within the proposed district. The notice shall be also mailed to each president of a homeowners association, if any, located within a proposed district which has registered with a resort operator to receive the information. Immaterial defects in the mailing of the notices shall not affect the validity of the notices: *Provided*, That in the case of any resort area district to be voted upon after the effective date of this amendment adopted during the 2015 regular session of the Legislature, any notice shall be mailed to the property owner's primary place of abode by certified mail, return receipt requested.

(h) Upon verification of a petition to expand the district, the resort area board shall set a date, time, and place for a vote of the qualified voters of the resort area district to be taken upon the proposed expansion.

(1) At least 60 days prior to the vote, the notice required by this section shall, using reasonable efforts, be mailed to each owner of real property in the resort area district and to each owner in the proposed resort area district expansion, posted in multiple, conspicuous, public locations within the proposed district, and published as a Class II legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code, and the publication area for the publication shall be the county in which the resort area district is located. For the purpose of notice of proposed expansion, "reasonable efforts" means mailing to the owner or owners of real

property in the resort area district, using the address of record at the resort area district office, as
of 90 days prior to notice. The notice shall be in the form of, or substantially in the form of, the
following notice:

“NOTICE TO ALL PERSONS OWNING PROPERTY LOCATED WITHIN _____ (here
describe the boundaries of the existing resort area district) IN THE COUNTY OF _____ (name
of county) and TO THE OWNERS OF PROPERTY IN THE PROPOSED EXPANSION AREA
(here describe the boundaries of the proposed expansion to the existing resort area district) IN
THE COUNTY OF _____ (name of county):

A verified petition has been presented to the resort area district (name of county)
requesting expansion of a resort area district to _____ (describe boundaries of expansion
area) in the county of _____ (name of county). A copy of the petition is available in the office
of the resort area district of the County of _____ (name of county) for review by the public
during regular office hours.

The vote to approve or disapprove the expansion of the resort area district will be held on
the following date (insert date), at the following time (insert time) and at the following location
(insert location).

_____ (name of resort area board chairperson)”

(2) All owners of real property in the existing resort area district and proposed expansion
shall be eligible to vote.

(3) The owners of each parcel or unit of real property are entitled to one vote, irrespective
of the number of owners of the parcel or unit.

(4) The ballots shall have written or printed on them the words:

“/ / For Expansion

// Against Expansion”

106 (5) Electronic submission of ballots is permitted in accordance with procedures in the
107 bylaws of the resort area district. If electronic submission is used, the notice will include the
108 electronic information for transmission.

109 (6) A simple majority of all legal votes cast in favor of expansion will result in expansion of
110 the resort area district.

111 (7) A copy of the boundaries of the resort area district as expanded shall be published on
112 the resort area district's website and provided upon request.

§7-25-10. Resort area boards.

1 (a) The powers of each resort area district shall be vested in and exercised by a resort
2 area board which shall be composed of seven members, the composition of which shall be as set
3 forth in subsection (b) of this section. Board members need not be residents of the district or
4 landowners, except where specifically required otherwise. For purposes of this section,
5 "residential, improved real property" includes, but is not limited to, condominium units,
6 townhouses, and single-family residences.

7 (b) The composition of a resort area board shall be as follows:

8 (1) Three board members at the time of nomination and as of the day of their election shall
9 be owners of or representatives of owners of residential, improved real property located within
10 the resort area district;

11 (2) Two board members shall be representatives of the primary resort operator ~~or~~
12 ~~operators~~ located within the resort area district;

13 (3) One board member at the time of nomination and as of the day of their election shall
14 be an owner or a representative ~~of owners~~ of commercial business property owners located within
15 the resort area district; however, for purposes of this subdivision, owners of residential, improved
16 real property who rent their property are excluded; and

17 (4) One board member at the time of nomination and as of the day of their election shall
18 be an owner or a representative of owners of unimproved, developable real property located

19 within the resort area district.

20 (c) For purposes of this section, if a parcel of real property is owned by one or more entities
21 (such as a corporation, limited liability companies, or other entity), then the following are also
22 eligible to serve on the board as an owner with respect to such parcel: (1) Any person having an
23 ultimate beneficial interest in the parcel, whether directly or indirectly, and regardless of the
24 number of intermediate ownership entities; and (2) any person designated at the outset of the
25 election as authorized, by an owning entity, to serve on the board as an owner for that particular
26 parcel. Nothing in this provision, however, creates any additional voting rights to the owners of a
27 single parcel of real property, and each parcel of real property shall be entitled to only one vote,
28 regardless of the number of owners participating in ownership of the parcel. Furthermore, nothing
29 in this provision authorizes the owners of real property of one type (such as the primary resort
30 operator, owners of residential improved real estate, or owners of unimproved, developable real
31 estate) to vote regarding a board position reserved to another ownership category.

32 (d) The board members shall be elected for terms of four years each and thereafter until
33 their respective successors have been elected and have been qualified, except, that of the board
34 members elected at the initial election meeting, two shall serve for a term of two years, two shall
35 serve for a term of three years, and three shall serve for a term of four years. At the first meeting
36 of the board, the board members shall determine by lot which of them shall serve the terms less
37 than four years. Each succeeding term is four years. Board members may be reelected for any
38 number of terms. In the event a board member who is required to own real property within the
39 district to be eligible for such board position no longer owns real property within the district, such
40 member may serve out the remainder of his or her term.

41 (e) Only owners of real property, including ~~owners of~~ commercial business property
42 owners, located within the district shall be eligible to vote in elections for board members.

43 (f) Elections for board members shall be held in accordance with bylaws adopted by the
44 board, but the provisions of §7-25-11 of this code shall govern the initial election of board

members. Voting shall be in person, by mailed ballot, by proxy, or by electronic means. The voting restrictions set forth in ~~subsections (d) and (e) of §7-25-11~~ §7-25-11(d) and §7-25-11(e) of this code shall apply to all board elections and may not be altered.

(g) Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath required by section five, article IV of the West Virginia Constitution ~~of this state~~.

(h) In the event that a board vacancy arises before the scheduled end of a board member's term, vacancies on the board shall be filled for the remainder of the unexpired term of the member whose office shall be vacant and such appointment, pursuant to the procedures set forth in subsection (r) of this section. Any board member may be removed by the board in case of incompetency, neglect of duty, gross immorality, or malfeasance in office, upon a unanimous vote of the remaining six board members. A vote of four board members is sufficient to schedule and conduct an election to fill an unexpired board member's term. Any other action of the board taken while one or more board positions are vacant must be unanimously approved by a board which is comprised of at least ~~six~~ five active serving board members.

(i) The board shall organize within 30 days following the first election of board members and annually thereafter at its first meeting after January 1, of each year by selecting one of its members to serve as chairman, one to serve as treasurer, and one to serve as secretary. The secretary, or his or her designee, shall keep a record of all proceedings of the board which shall be available for inspection as other public records and the ~~Treasurer~~ treasurer, or his or her designee, shall maintain records of all financial matters relating to the resort area district, which shall also be made available for inspection as other public records. The secretary and treasurer shall perform such other duties pertaining to the affairs of the resort area district as shall be prescribed by the board.

(j) The initial board shall adopt bylaws for the district: *Provided*, That the adoption of such bylaws and any subsequent amendments thereto shall require approval by six-sevenths of the

board.

(k) The members of the board, and the chairman, secretary, and treasurer thereof, shall make available, at all reasonable times and upon reasonable notice, all of its books and records pertaining to the resort area district's operation, finances, and affairs for inspection and audit. The board shall meet at least semiannually.

(l) A majority of the members of the board constitutes a quorum and meetings shall be held at the call of the chairman. Board members may vote either in person, by telephone, or by electronic means.

(m) Staff, office facilities, and costs of operation of the board may be provided by the county which created the resort area district or by contract, and said costs of operations shall be funded from resort service fees collected within the district or any other source.

(n) The chairman shall preside at all meetings of the board and shall vote as any other members of the board, but if he or she should be absent from any meeting, the remaining members may select a temporary chairman, and if the member selected as chairman resigns as chairman or ceases for any reason to be a member of the board, the board shall select one of its members to serve as chairman until the next annual organizational meeting.

(o) The board shall, by resolution, determine its own rules of procedure, fix the time and place of its meetings, and the manner in which special meeting may be called. The members of the board shall not be personally liable or responsible for any obligations of the resort area district or the board but are answerable only for willful misconduct in the performance of their duties.

(p) The members of the board shall may serve without with reasonable compensation but as the board of directors may fix, except where prohibited by law, and shall receive reimbursement for actual and necessary expenses incurred in connection with the performance of their duties.

(q) Every board member who handles public funds or property, and every other officer or employee of a resort area district of whom it shall be required, shall, unless otherwise provided by law, give bond, with good security, to be approved by the board, and in such penalty as such

board, conditioned upon the faithful discharge of the duties of his or her office or employment and the faithful accounting for and paying over, as required by law, of any funds or property coming into his or her possession.

(r) Vacancies on the board shall be filled by a special election within 120 days of the vacancy unless the vacancy occurs within the last 365 days of the board member's term. The special election shall be on a date specified by the board, which shall not be less than 45 days sooner than publication of notice of the election. If the vacancy occurs within the last 365 days of the board member's term, the board shall appoint a replacement who meets the qualifications for the vacant seat. Recommendations for the replacement shall be made by the type of ownership category for the seat vacated. The new board member shall serve out the remainder of the unexpired term and may stand for subsequent election as long as he or she is eligible for the seat. The publication process for an election to fill a vacancy shall be the same as set forth in subsections (c), (d) and (e) of ~~§7-25-11~~ §7-25-11(c), §7-25-11(d), and §7-25-11(e) of this code, and only those owners eligible to vote for the board member whose departure from office caused the vacancy shall be eligible to vote to replace the member. Without limiting the foregoing, and by way of example, only owners of improved residential property may vote to fill a vacancy created by the departure from office of a board member elected by that class of owner. Notwithstanding the provisions of this subsection, a vacancy in the office of the board as to a board member elected or appointed as a resort primary operator representative, may be filled by direct appointment of the primary resort operator, rather than by election. ~~if only one resort operator exists in the district.~~

§7-25-15. Authorization to implement assessments for projects or services; procedures for implementing assessments; by-laws to provide additional procedures for implementation of assessments; notice to property owners before implementation of assessments for projects or services; voting on assessments; affidavit of publication.

1 (a) An assessment for a project within a resort area district shall be authorized by the
2 adoption of a resolution by the board. The annual aggregate limit of assessments that may be
3 levied against a parcel of real property within the district is five percent of the appraised value of
4 the real property, including improvements, as shown in the property tax records and land books
5 of the county in which the property is located. A resolution authorizing an assessment shall only
6 be adopted after following the procedures set forth in this section.

7 (b) A service assessment within a resort area district shall be authorized by the adoption
8 of a resolution by the board.

9 ~~(b)~~ (c) The bylaws of a district shall provide the procedures not addressed in this section
10 for the implementation of an assessment to pay the costs of a project or service: *Provided*, That
11 the procedures must be consistent with constitutional standards and all other laws and rules of
12 this state.

13 ~~(c)~~ (d) Fifty-one percent or more of the owners of real property to be benefitted by a project
14 or service may petition the board to implement an assessment to pay the costs of the project or
15 service. A board may on its own initiative propose an assessment to pay the costs of a project or
16 service upon approval by six sevenths of the board.

17 ~~(d)~~ (e) Upon following the procedures provided in this section and a resort area district's
18 bylaws for the implementation of an assessment to pay the costs of a project or service, the board
19 may, after giving notice to all real property owners, holding a public meeting and a vote on the
20 project or service if required by this section, adopt a resolution authorizing the assessment to pay
21 the costs of a project or service upon approval by six sevenths of the board.

22 ~~(e)~~ (f) Before the adoption of a resolution authorizing an assessment to pay the costs of a
23 project or service, the board shall cause notice to be given to the owners of real property located
24 within the resort area district that the resolution will be considered for adoption at a public meeting
25 of the board at a date, time, and place named in the notice and that all persons at that meeting,
26 or any adjournment thereof, shall be given an opportunity to protest or be heard concerning the

27 adoption or rejection of the resolution. If, as provided in subsection ~~(f)~~ (g) of this section, a
28 favorable vote of the property owners is required before the board authorizes the assessment,
29 the notice of meeting shall also contain information required to enable the owners of real property
30 within the district that will be subject to the assessment to vote on the assessment by mail or
31 electronic means.

32 ~~(f)~~ (g) An assessment may not be authorized by the board if at the public meeting required
33 by this section written protest is filed by at least 25 percent of the owners of the real property
34 within the district to be benefitted by the proposed project or service and subject to the
35 assessment. However, before an assessment proposed by the board on its own initiative as
36 provided in subsection ~~(e)~~ (d) of this section is authorized by the board, the proposal must also
37 receive the favorable vote of a majority of the votes cast at the meeting for the proposal by the
38 owners of real property in the district that will be subject to the assessment. Voting at the meeting
39 shall be in person or by proxy at the meeting, or by mailed ballot or electronic means received
40 prior to the meeting. The voting rules set forth in §7-25-11(e) of this code apply to all voting on
41 assessments. In the event of such protest, the proposed assessment in the same form may not
42 be reconsidered by a board for a period of at least one year from the date of the public meeting.

43 ~~(g)~~ (h) At least 30 days prior to the date of the public meeting, the notice required by this
44 section shall, using reasonable efforts, be mailed to the owners of real property to be assessed
45 for a proposed project as provided in subsection ~~(k)~~ (l) of this section, posted in multiple,
46 conspicuous, public locations within the district and published as a Class II legal advertisement in
47 compliance with the provisions of §59-3-1 *et seq.* of this code. The publication area for the
48 publication is the resort area district.

49 ~~(h)~~ (i) An affidavit of publication of the notice made by newspaper publisher, or a person
50 authorized to do so on behalf of the publisher, and a copy of the notice shall be made part of the
51 minutes of the board and spread on its records of the meeting described in the notice. The service
52 of the notice upon all persons owning any interest in any real property located within the resort

53 area district shall conclusively be determined to have been given upon completion of mailing as
54 provided in subsection ~~(k)~~ (l) of this section and the newspaper publication.

55 ~~(j)~~ (i) After the public meeting and before the board may adopt a resolution authorizing
56 implementation of assessments, the board shall, using reasonable efforts, mail a true copy of the
57 proposed resolution authorizing implementation of an assessment to the owners of real property
58 in the resort area district as provided in subsection ~~(k)~~ (l) of this section.

59 ~~(j)~~ (k) A board shall make available to the owners of real property within the district a list
60 of all owners of real property within the district for the purposes of enabling the owners of real
61 property to solicit support for a petition proposing or a protest against an assessment.

62 ~~(k)~~ (l) For purposes of the mailing of each notice to owners of real property required by
63 this section, reasonable efforts shall be made to mail the notice to all owners of real property
64 required to receive notice under this section using the real property tax records and land books
65 of the county in which the district is located and any lists maintained by a resort operator or
66 homeowners association within the district. The notice shall be also mailed to each president of
67 a homeowners association, if any, located within a district which has registered with a resort
68 operator to receive the information. Immaterial defects in the mailing of the notices shall not affect
69 the validity of the notices.